

No. 1-11-2268

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 12704
)	
ANTONIO ARNOLD,)	Honorable
)	Evelyn B. Clay,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Quinn and Connors, JJ., concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's four convictions for aggravated unlawful use of a weapon are vacated where they all arose from the same physical act, possession of a firearm, as his conviction for the more serious offense of unlawful use of a weapon by a felon. Defendant's two convictions for unlawful use of a weapon by a felon, one for possessing the firearm and one for possessing the ammunition inside that firearm, are affirmed as the amended statute allows for the multiple convictions.

¶ 2 Following a bench trial, defendant Antonio Arnold was convicted of two counts of unlawful use of a weapon (UUW) by a felon and four counts of aggravated UUW. The trial court sentenced defendant to concurrent prison terms of four years for each of the six convictions with a recommendation for boot camp. On appeal, the parties agree that defendant's four convictions for aggravated UUW must be vacated because they all arose from the same physical act as his

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conviction for the more serious offense of UYW by a felon. Defendant also contends that his conviction for UYW by a felon for possession of firearm ammunition (Count 2) should be vacated under the one-act, one-crime doctrine because the ammunition was loaded inside the gun he was convicted of possessing under Count 1. We vacate defendant's four aggravated UYW convictions and affirm his two convictions and sentences for UYW by a felon.

¶ 3 Defendant was tried on charges of UYW by a felon for possession of a firearm (Count 1), UYW by a felon for possession of the ammunition loaded inside that firearm (Count 2), and four counts of aggravated UYW, all of which were based on his possession of the firearm. Because defendant does not contest the sufficiency of the evidence to sustain his convictions, a detailed discussion of the facts of this case is unnecessary. The evidence established that about 1:48 a.m. on June 19, 2009, Chicago police officers Matt Parochelli and David Carey were on routine patrol in their marked squad car when they saw defendant standing in a grassy area of a Chicago Housing Authority residential building holding a chrome revolver in his right hand. When defendant saw the police, he placed the gun inside his waistband and fled. Officer Parochelli exited the squad car and chased defendant. As defendant ran through a parking lot, he removed the gun from his waistband with his right hand and dropped it to the ground. Shortly thereafter, Officer Parochelli detained defendant. While Officer Carey handcuffed defendant, Officer Parochelli returned to the parking lot and recovered the gun defendant had dropped. The gun was a chrome .32-caliber revolver that was loaded with two live rounds. The State submitted a certified copy of defendant's prior felony conviction for aggravated battery, and the parties stipulated that defendant did not possess a valid firearm owner's identification card on the date of this offense. The trial court found defendant "guilty as charged." The court subsequently sentenced defendant to concurrent prison terms of four years for each of the six convictions with a recommendation for boot camp.

¶ 4 On appeal, the parties agree that defendant's four convictions for aggravated UYW must be vacated because they all arose from the same single physical act, possession of the firearm, as

his conviction for the more serious offense of UUW by a felon under Count 1. See *People v. King*, 66 Ill. 2d 551, 566 (1977). Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we vacate defendant's four convictions and sentences for aggravated UUW, and direct the clerk of the circuit court to amend the mittimus to reflect this modification.

¶ 5 We note that the mittimus shows only three counts of aggravated UUW rather than four. However, the report of proceedings clearly shows that the trial court found defendant guilty and subsequently sentenced him on four counts of aggravated UUW. When the trial court's oral judgment and written judgment conflict, the oral judgment is controlling. *People v. Savage*, 361 Ill. App. 3d 750, 762 (2005). We, therefore direct the clerk of the circuit court to insure that all counts of aggravated UUW in this case are vacated from defendant's mittimus.

¶ 6 Defendant next contends that his conviction for UUW by a felon for possession of firearm ammunition (Count 2) should be vacated under the one-act, one-crime doctrine because the ammunition was loaded inside the gun he was convicted of possessing under Count 1. Defendant argues that possession of a loaded handgun is one single act. He asserts that, in order to be convicted of two counts, there must be separate possession of the firearm and the ammunition. Defendant acknowledges that the legislature amended the statute in 2005, but argues that the amendment allows for multiple convictions only where the ammunition is separate from the firearm. He argues that the statute does not explicitly authorize a second conviction for the ammunition when the firearm is loaded, and therefore, the statute must be construed in his favor. Defendant acknowledges that his argument was previously rejected by this court in *People v. Anthony*, 2011 IL App (1st) 091528-B, but claims that decision was incorrect and should not be followed.

¶ 7 The State argues that the plain language of the statute expressly authorizes multiple convictions for possessing a loaded gun – one conviction for possession of the firearm, and one

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conviction for possession of the ammunition inside that firearm. The State urges this court to follow its decision in *Anthony*.

¶ 8 Defendant asserts, and the State agrees, that although he failed to raise this issue at trial or in his posttrial motion, the court should review his claim as plain error. Because an alleged violation of the one-act, one-crime principle has the potential for a surplus conviction and sentence, it affects defendant's fundamental rights, and therefore, we will review his claim under the plain error doctrine. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004). Whether a conviction should be vacated under the one-act, one-crime principle is a question of law which we review *de novo*. *People v. Peacock*, 359 Ill. App. 3d 326, 331 (2005).

¶ 9 Multiple convictions based on precisely the same physical act are improper. *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996); *King*, 66 Ill. 2d at 566. Our supreme court has consistently defined an "act" as "any overt or outward manifestation which will support a different offense." *Rodriguez*, 169 Ill. 2d at 188; *King*, 66 Ill. 2d at 566. To sustain multiple convictions, the charging instrument must indicate that the State intended to treat defendant's conduct as separate, multiple acts. *People v. Crespo*, 203 Ill. 2d 335, 345 (2001). Defendant can be convicted of two separate offenses where a common act is part of both crimes. *Rodriguez*, 169 Ill. 2d at 188. Multiple convictions with concurrent sentences are permitted where defendant has committed multiple acts, "despite the interrelationship of those acts." *King*, 66 Ill. 2d at 566.

¶ 10 The interpretation of a statute is a question of law which we review *de novo*. *People v. Carter*, 213 Ill. 2d 295, 301 (2004). When interpreting a statute, a court must ascertain and give effect to the intent of the legislature. *Carter*, 213 Ill. 2d at 301. The language of the statute is the most reliable indicator of the legislature's intent. *Carter*, 213 Ill. 2d at 301. Where the language of the statute is plain and unambiguous, it must be read without limitation, exception, or other condition. *Carter*, 213 Ill. 2d at 301.

¶ 11 The statute for the offense of UUW by a felon states that it is unlawful for any person who has been convicted of a felony to knowingly possess "any firearm or any firearm

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ammunition." 720 ILCS 5/24-1.1(a) (West 2008). In 2004, our supreme court interpreted this statute and found, as written at that time, the statute allowed only one conviction for the simultaneous possession of multiple firearms and ammunition. *Carter*, 213 Ill. 2d at 306. The court found that the word "any" rendered the statute ambiguous as to the "allowable unit of prosecution." *Carter*, 213 Ill. 2d at 302. Consequently, the court found that it was required to construe the statute in favor of the defendant, and therefore, multiple convictions were not allowed. *Carter*, 213 Ill. 2d at 302. At the end of its decision, the court stated that it agreed with the State's assertion that a felon who possesses a loaded gun may be more dangerous than a felon who possesses an unloaded gun. *Carter*, 213 Ill. 2d at 306. The court explained, however, that "it is for the legislature to 'defin[e] what it desires to make the [allowable] unit of prosecution.'" (Internal quotation marks omitted.) *Carter*, 213 Ill. 2d at 306, quoting *People v. Manning*, 71 Ill. 2d 132, 137 (1978), quoting *Bell v. United States*, 349 U.S. 81, 83 (1955).

¶ 12 In 2005, our legislature amended the statute in response to the decision in *Carter* (*Anthony*, 2011 IL App (1st) 091528-B, ¶ 17) by adding a sentence to the end of the subsection that addresses sentencing. The statute now additionally states "The possession of each firearm or firearm ammunition in violation of this Section constitutes a single and separate violation." 720 ILCS 5/24-1.1(e) (West 2008). In *Anthony*, this court found that the plain and unambiguous language of this statute allows for multiple convictions where defendant is in simultaneous possession of a firearm and firearm ammunition. *Anthony*, 2011 IL App (1st) 091528-B, ¶ 9. We agree with this interpretation and decline to depart from our prior decision.

¶ 13 Furthermore, we find no merit in defendant's argument that the statute must be construed in his favor because it does not explicitly authorize a second conviction for the ammunition when the firearm is loaded. This court rejected defendant's argument in *Anthony*, and we continue to do so here. The clear and unambiguous language of the statute contains no exception for circumstances where the ammunition is loaded inside the firearm. *Anthony*, 2011 IL App (1st) 091528-B, ¶ 16. As in *Anthony*, we refuse to create such an exception here.

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¶ 14 In addition, we reject defendant's argument that the amendment allows for multiple convictions only where the ammunition is separate from the firearm. That interpretation would allow only one conviction for a felon who possesses a loaded firearm, but allow two convictions, thus a greater punishment, for a felon who possesses an unloaded gun and ammunition that has not been inserted into the gun. *Anthony*, 2011 IL App (1st) 091528-B, ¶ 16. Such a conclusion would produce an absurd result, and this court is prohibited from interpreting a statute in a way that would produce an absurd result. *Anthony*, 2011 IL App (1st) 091528-B, ¶ 16.

¶ 15 Finally, defendant claims that the legislative history indicates that the amendment to the statute was not intended to allow multiple convictions for a person who possesses a loaded gun. We decline to resort to an analysis of the legislative history of the amendment. We have found that the language of the statute is plain and unambiguous, and therefore, we must apply the statute as written without resorting to additional aids of statutory construction. *Anthony*, 2011 IL App (1st) 091528-B, ¶ 18, citing *People v. Collins*, 214 Ill. 2d 206, 214 (2005).

¶ 16 Accordingly, we conclude that in this case, defendant's two convictions for UUI by a felon, one for possessing the firearm and one for possessing the ammunition inside that firearm, are proper.

¶ 17 For these reasons, we vacate defendant's four convictions and sentences for aggravated UUI, direct the clerk of the circuit court to amend the mittimus to reflect this modification, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 18 Affirmed in part; vacated in part; mittimus amended.